

**Letter of Findings: 06-0479**  
**Gross Retail Tax**  
**For 2003, 2004, and 2005**

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**ISSUE**

**I. Automobile Sales – Gross Retail Tax**

**Authority:** IC § 6-2.5-3-6(d); IC § 6-8.1-5-1(b)

Arguing that it never purchased or sold the vehicles in question, taxpayer maintains that the Department of Revenue erred in assessing additional gross retail (sales) tax on the sale of twenty-three automobiles.

**STATEMENT OF FACTS**

Taxpayer is an Indiana business engaged in buying, selling, and repairing automobiles. Taxpayer sells used automobiles at both wholesale and retail.

The Department of Revenue (Department) conducted an audit review of taxpayer's business records. The audit report was completed in July 2006 and found that taxpayer had underreported the number of vehicles it sold and that, as a result, taxpayer owed additional sales tax.

Taxpayer protested, an administrative hearing was conducted during which taxpayer explained the basis for its protest, and this Letter of Findings results.

**I. Automobile Sales – Gross Retail Tax**

**DISCUSSION**

The Department's audit report concluded that taxpayer had underreported the number of vehicles it sold. The audit reached this conclusion after reviewing copies of ST-108 forms maintained by the Indiana Bureau of Motor Vehicles (BMV). The audit found that taxpayer had sold the vehicles, collected sales tax, but failed to remit the tax to the state; taxpayer argues that the BMV records are incorrect because taxpayer "never purchased or sold these vehicles." Taxpayer argues that other persons must have sold the vehicles.

The issue is whether Taxpayer has met its burden of demonstrating that it did not sell the vehicles in controversy. The Department refers to IC § 6-8.1-5-1(b), which provides that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made.

When a customer purchases an automobile and pays sales tax to the retail merchant, the retail merchant issues a Form ST-108 to the purchaser. The purchaser presents the ST-108 to the Bureau of Motor Vehicles as proof that the purchaser paid sales tax to the retail merchant as required under IC § 6-2.5-3-6(d). Without the ST-108, the purchaser is required to pay sales tax to the BMV on the sales price of the vehicle.

The Department examined twenty-three ST-108 forms. These forms represent the sale of twenty-three vehicles for an aggregate price of approximately \$200,000.

Each of the ST-108 forms names taxpayer as the dealer which sold the car. Each of the twenty-three forms lists taxpayer's retail merchant certificate number. Each of the forms lists the seller's address – city, street, and zip code – as taxpayer's own address. Nonetheless, taxpayer indicates that it did not sell these twenty-three particular vehicles. Taxpayer explains the discrepancy by stating that the vehicles were sold by two acquaintances who operated a competing car dealership in a different town some twenty miles removed from taxpayer's own location. As taxpayer explains, "[I]t seems that [competitor] has retailed various vehicles and reported them sold using [taxpayer's] sales tax numbers without our knowledge or permission."

In order to accept taxpayer's proposition that taxpayer's competitor sold the twenty-three vehicles, the Department must accept the proposition that twenty-three customers walked away from the competitor's location – after having paid thousands of dollars for their new vehicle – with a tax form specifically indicating that they had purchased that vehicle from a different business in a different location twenty miles distant. The Department must accept the proposition that the twenty-three customers accepted from the seller a tax form indicating that they paid sales tax to a different business than the one from which they had purchased the vehicle. The Department must accept the proposition that the twenty-three customers walked into their local BMV license branch and presented a tax form which – on its face – the customers knew was incorrect. The Department is unable to accept any of these propositions but is led to the conclusion that taxpayer has failed to meet its burden of demonstrating that it is not responsible for paying the sales tax.

**FINDING**

Taxpayer's protest is respectfully denied.

*Posted: 10/31/2007 by Legislative Services Agency*

